Supreme Court, U.S.
FILED
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No. 09-667

IN THE

Supreme Court of the United States

YIQING FENG

Petitioner,

v.

SABIC AMERICAS, INC.

Respondent

On Writ of Certiorari
To the Supreme Court of Texas

PETITION FOR REHEARING

Yiqing Feng
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Washington, DC 20016
Tel: 713-876-5725
Petitioner

In this Petition for Rehearing, I present following redrafted "Question Presented" to replace the old one in my "Petition for Writ of Certiorari".

QUESTION PRESENTED

At this [terminating-protected-employees] retaliation issue is that very **rarely** United States Courts have refused the Jury Trial. Summary Judgment in my case departed from the usual course of judicial proceedings. The undisputable retaliation fact is that Respondent (Defendant or Sabic Americas, Inc.) fired me (a Stellar Employee) in less than 30 working days after I filed discriminations charges with Equal Employment Opportunity Commission (EEOC). Sabic Americas, Inc.'s Summary Statement, in contrary to factual findings, falsely turned me from Stellar Employee into "Insubordinate" one.

PRAY THIS COURT TO RE-EXAMINE

U.S. Constitution, Amendment Seven said "In Suits at common law, where the value in controversy shall exceed twenty dollars. the right of trial by Jury shall be reserved, and no fact trialed by a Jury, shall be otherwise **re-examined** in any court of the United States, than according to the rules of common law."

This Court has supreme power in overseeing the implement of the US Constitution and supervision of lower courts. I sincerely expect that this Court re-examine my case.

THE SEVENTH AMENDMENT INDICATED THE RIGHT OF TRIAL BY JURY

The Amendment has for its primary purpose the preservation of "the common law distinction between the province of the court and that of the jury, whereby, in the absence of expressed or implied consent to the contrary, issues of law are resolved by the court and issues of fact are to be determined by the jury under appropriate instructions by the court. *Baltimore & Carolina Line v. Redman, 295 U.S. 654, 657 (1935); Walker v. New Mexico & So. Pac. R.R., 165 U.S. 593, 596 (1897);*

When a state court is enforcing a federally created right, of which the right to trial by jury is a substantial part, the states may not eliminate trial by jury as to one or more elements. *Dice v. Akron, C & Y. R.R., 342 U.S. 359 (1952).*

Parties may enter into a stipulation waiving a jury and submitting the case to the court upon an

agreed statement of facts, even without any legislative provision for waiver. *Henderson's Distilled Spirits, 81 U.S. (14 Wall.) 44, 53 (1872); Rogers v. United States, 141 U.S. 548, 554 (1891)*

The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law. *Curtis v. loether, 415 U.S. 189, 194 (1974).*

The use of the term "common law" in the Amendment as indicating those cases in which the right to jury trial was to be preserved reflected, of course, the division of the English and United States legal systems into separate law and equity jurisdictions, in which actions cognizable in courts of law generally were tribal to a jury while inequity there was no right to a jury. But the traditional distinction between law and equity for purposes of determining when there was a constitutional right to trial by jury remained and led to some difficulty. The difficulty has been resolved by stressing the fundamental nature of the jury trial right and protecting it against diminution through resort to equitable principles. In *Dairy Queen v. Wood, 369 U.S. 469 (1962)*, in which the plaintiff sought several types of relief, including an injunction and an accounting for money damages, the Court held that, even though the claims for legal relief was incidental to the equitable relief sought, the Seventh Amendment required that the issues pertaining to that legal adjudicated were legal in character. Thus, the rule that emerged was that legal claims must be tried before equitable ones

and before a jury if the litigant so wished. In *Ross v. Bernhard, 396 U.S. 531 (1970)*, the court further held that the right to a jury trial depends on the nature of the issue to be tried rather than the procedural framework in which it is raised.

MY SO-WISHED JURY TRIAL IS COMPLETELY A CONSTITUTION ISSUE

I believe my so-wished jury trial is completely a Constitution related issue and should be interpreted by the US Constitution Amendment Seven.

At this [terminating-protected-employees] retaliation issue is that very rarely United States Courts have refused the Jury Trial. These rare cases were cited in Summary Judgment by Texas 14th Court of Appeal (Appendix of "Petition for Writ of Certiorari", page a-28,29). These rare cases should not be cited in against me - a stellar employee.

There is Case Law. There are Statutes, and also there are Federal and Texas State Summary Judgment Standard. I will argue my Jury Trial right based on corresponding law, statutes and rules in my "Brief on Merit" if my "Petition for Writ of Certiorari" is granted.

This court should correct lower courts' judgments in guaranteeing the Amendment Seven, equally on each US Citizen under the spirit of "Equal Justice Under Law". I sincerely expect that this Court won't exclude me out of "Equal Justice Under Law" and out of the US Constitution right. **(This is my compelling reason and distinct ground of this "Petition for Rehearing")**

PRAYER

I sincerely expect that this Court will grant me "Petition for Writ of Certiorari" and award me a Jury Trial later. This will help me stop my future life-long continuous efforts for so-wished "Jury Trial".

Respectfully Submitted,

By: Yiqing Feng